

Montana Water Court
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FILED
08/09/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
40D-0205-R-2023
Nordlund, Julia
2.00

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
BIG DRY CREEK - BASIN (40D)
PRELIMINARY DECREE

CLAIMANTS: James F. Baker; Larry J. Baker; Mardrie A.
Baker

CASE 40D-0205-R-2023
40D 38751-00
40D 113955-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this Report carefully.

You may file a written objection to this Master's Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master's Report was filed and mailed. Pursuant to Water Right Adjudication Rule 23, written objections to a Master's Report must be filed within **10 days** of the date the Report was filed. If this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

If you file an objection, you must mail a copy of the objection to all parties on the Service List found at the end of this Master's Report. The original objection and a certificate of mailing to all parties on the Service List must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Claims 40D 38751-00, 40D 113955-00 appeared in the Preliminary Decree for the Big Dry Creek (Basin 40D) with issue remarks resulting from pre-decree examination by the Department of Natural Resources and Conservation (DNRC). The claims did not receive objections, counterobjections, or notices of intent to appear. To address the issue remarks, the Water Court consolidated the claims into case 40D-0205-R-2023.

FINDINGS OF FACT

1. Claim 40D 113955-00 received the following issue remark:
THE PLACE OF USE APPEARS TO BE IN THE SWNWNE SEC. 27 TWP 20N RGE 36E GARFIELD COUNTY.
2. Claimants were given a deadline of June 23, 2023 to respond to the issue remark. If nothing was filed, the Court stated it would change the abstracts to match what the remarks recommended.
3. No response was filed.
4. The place of use for claim 40D 113955-00 is:

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNWNE	SWNWSE	27	20N	36E	GARFIELD

5. These claims also appeared with issue remarks providing notice of DNRC changes to the claims, the addition of a period of diversion to match the period of use, and/or excessive volume.

CONCLUSIONS OF LAW

1. The Water Court has exclusive jurisdiction to determine the extent of all water rights in Montana as they existed prior to July 1, 1973. *In re Deadman's Basin Water Users Ass'n*, 2002 MT 15, ¶ 15; Section 3-7-501, MCA.

2. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248(2). The Court has authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.
3. When resolving issue remarks, the Court must weigh the issue remark and the information resulting in the issue remark against the claimed water right. Section 85-2-247(2), MCA. The Water Court is permitted to use information submitted by DNRC, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.
4. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie status may be overcome by a preponderance of the evidence showing that an element of the claim is incorrect. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33.
5. If a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Court, the Court may upon motion or its own initiative, issue such orders of sanction with regard thereto as are just. Rule 22, W.R.Adj.R.
6. Sanctions for a claimant’s failure to comply with an order issued by the Court in its review of issue remarks include: 1) amending elements of the claim to conform with information in the claim file, 2) amending element of the claim to conform with information obtained by the court, or 3) removing the issue remark. Section 85-2-248(9), MCA; Rule 22, W.R.Adj.R.
7. Claimants failed to respond to the Water Court’s Order Setting Filing Deadline. Therefore, it is proper for the Water Court to resolve the issue remarks and amend the claim element to conform with DNRC issue remarks.
8. The remarks served their purpose of giving basin-wide notice of the potential issues. No objections or notices of intent to appear were filed. These claims were properly

filed rights. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. The issue remarks served their purpose and can be removed.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, the changes specified above should be adopted. Post-decree abstracts of the claims accompany this Order to confirm the changes have been made in the State's centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

James F. Baker
Larry J. Baker
Mardrie A. Baker
PO Box 367
Jordan, MT 59337-0367

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BIG DRY CREEK
BASIN 40D**

Water Right Number: 40D 38751-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

MARDRIE A BAKER
PO BOX 367
JORDAN, MT 59337 0367

LARRY J BAKER
PO BOX 367
JORDAN, MT 59337

JAMES F BAKER
PO BOX 367
JORDAN, MT 59337 0367

Priority Date: JULY 9, 1934

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 303.40 AC-FT

Climatic Area: 1 - HIGH

Maximum Acres: 74.00

Source Name: RED HORSE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENWSW	27	16N	40E	GARFIELD

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM **Reservoir Name:** CLAUSON RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SENWSW	27	16N	40E	GARFIELD

Diversion to Reservoir: DIVERSION # 1

Dam Height: 10.00 FEET

Depth: 7.00 FEET

Surface Area: 11.88 ACRES

Capacity: 33.26 ACRE-FEET

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	7.00		E2SW	27	16N	40E	GARFIELD
2	7.00		W2SE	27	16N	40E	GARFIELD
3	38.00		NE	34	16N	40E	GARFIELD
4	8.00		E2NESE	34	16N	40E	GARFIELD
5	12.00		W2SW	35	16N	40E	GARFIELD
6	2.00		SWSWNW	35	16N	40E	GARFIELD
Total:							
	74.00						

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

38740-00

38751-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BIG DRY CREEK
BASIN 40D

Water Right Number: 40D 113955-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MARDRIE A BAKER
PO BOX 367
JORDAN, MT 59337 0367

JAMES F BAKER
PO BOX 367
JORDAN, MT 59337 0367

Priority Date: DECEMBER 31, 1965

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: UNNAMED TRIBUTARY OF VAIL CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNWNE	27	20N	36E	GARFIELD

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWNWNE	27	20N	36E	GARFIELD

Diversion to Reservoir: DIVERSION # 1

Dam Height: 8.00 FEET

Depth: 5.00 FEET

Surface Area: 0.85 ACRES

Capacity: 1.70 ACRE-FEET

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWNWNE	27	20N	36E	GARFIELD